

FERNANDO SAMANIEGO.

FEBRUARY 11, 1860.—Reported from the Court of Claims; committed to a Committee of the Whole House, and ordered to be printed.

The COURT OF CLAIMS submitted the following

REPORT.

To the honorable the Senate and House of Representatives of the United States in Congress assembled:

The Court of Claims respectfully presents the following documents as the report in the case of

FERNANDO SAMANIEGO *vs.* THE UNITED STATES.

1. The petition of the claimant.
2. Original documentary evidence in the case, transmitted to the House of Representatives.
3. Claimant's brief.
4. United States solicitor's brief.
5. Opinion of the court adverse.

By order of the Court of Claims.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court, at Washington, this fifth day of December,
[L. s.] A. D. 1859.

SAM'L H. HUNTINGTON,
Chief Clerk Court of Claims.

FERNANDO SAMANIEGO *vs.* THE UNITED STATES.

To the honorable the judges of the Court of Claims:

The petition of Fernando Samaniego, of San Antonio, in the State of Texas, respectfully represents:

That in the month of April, A. D. 1855, W. W. Chapman, brevet major and assistant quartermaster in the army of the United States, by the direction of General Persifer F. Smith, made an offer to your petitioner to transport all the United States stores from Fort Clark to Fort Davis for one year at six cents per pound. The petitioner accepted the said offer so far as his own wagons were concerned, and agreed that if, after going to San Antonio and consulting his associates, they also accepted it, he would return to Corpus Christi and make a formal written contract. It was also agreed that while in San Antonio he was to send his train to Fort Clark, so as to arrive there about the 10th of May,

1855, which he did, and took a load to Fort Davis. Subsequently your petitioner returned from San Antonio to Corpus Christi, prepared to reduce the contract to writing, but the said Chapman declined to do so, on the ground that he had learned in the meantime that a contract had been made with other parties by order of the Secretary of War, but agreed that he would give the petitioner all the freight he could without interfering with the said contract with said parties.

On June 24, 1855, W. K. Van Bokkelen, captain and assistant quartermaster at Fort Clark, addressed a letter to Major and Assistant Quartermaster Chapman, at Corpus Christi, saying, "F. Samaniego is here with his train, and will leave for Fort Davis about the 10th of July, returning to this post 20th of August. He wishes to know if a load will be here at that time, if not, he will not return." To this letter Major Chapman, under date of July 10, 1855, replies: "Your letter of June 24, was duly received. Please inform F. Samaniego that there will be a load for his train at Fort Clark by the 20th of August." In pursuance of these instructions from Major Chapman, acting chief assistant quartermaster, department of Texas, Captain Van Bokkelen directed the petitioner to be at Fort Clark with his train by the 20th of August for a load to Fort Davis, Texas. Your petitioner reported with seventeen large wagons, with ten mules to each, on August 23, 1855, and awaited his loading until November 25, 1855, and on that day received the stores which had just arrived at Fort Clark from Corpus Christi. Your petitioner was thus delayed at Fort Clark for the period of three months and two days, whither he had gone under the directions of the quartermaster's department, with the positive assurance that he should have a load for his train on the 20th of August, and was during all said time ready and willing and waiting to transport the stores in pursuance of the agreement with the government. The damages and expenses to which your petitioner was subjected without any fault on his part, but by the acts and omissions of the officers of the United States to fulfil their engagements, are as follows, viz:

To wages of 24 men, at \$25 per month—3 months and two days.....	\$1,839 84
To subsistence for 24 men, at 25 cents per day.....	532 00
To forage for 180 mules and horses, 3 months and 2 days, at the rate of 12 lbs. corn each per day, at \$1 50 per bushel.	5,349 64
To wages of overseer at \$100 per month for 3 months and 2 days	306 66
To subsistence for ditto.....	23 00
To demurrage, at \$5 per day, for wagons and teams, 92 days.	7,820 00
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	15,871 14
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The petitioner is the sole owner of the claim, and has assigned no part of the same. Application for payment has been made of the proper departments of the government, but has been refused, not on the ground of any fault or omission of your petitioner, but from the default or omissions of the officers of the United States. No applica-

tion has been made to Congress. Your petitioner therefore respectfully asks that your honors will inquire into the foregoing matters, and grant him adequate relief in the premises.

F. SAMANIEGO.

UNITED STATES COURT OF CLAIMS.

F. SAMANIEGO *vs.* THE UNITED STATES.

List of papers filed on behalf of the petitioner.

No. 1. Captain W. K. Van Bokkelen, report to Lieutenant Colonel A. C. Myers, dated May 2, 1856.

No. 2. Same to Major W. W. Chapman, dated June 24, 1855.

No. 3. Major Chapman to Captain Van Bokkelen, dated July 10, 1855.

No. 4. Certificate of Captain Van Bokkelen, dated August 23, 1856.

No. 5. Captain Van Bokkelen to Major Chapman, dated September 3, 1855.

No. 6. Major Chapman to Lieutenant Colonel Myers, dated December 28, 1855.

No. 7. Colonel Thomas to Major Chapman, dated January 25, 1856.

No. 8. Same to Major Belger, dated January 25, 1856.

No. 9. Major Chapman to General Jesup, dated February 9, 1856.

No. 10. General Jesup to Major Chapman, dated February 27, 1856.

No. 11. Lieutenant Colonel Myers to General Jesup, dated December 19, 1856.

No. 12. General Jesup to Lieutenant Colonel Myers, dated January 7, 1857.

No. 13. Same to R. J. Atkinson, Third Auditor, dated April 22, 1857.

No. 14. Same to R. Burgess, dated January 22, 1857.

No. 15. Account of F. Samaniego.

No. 16. Report of Third Auditor and decision of Second Comptroller, dated May 6, 1857.

JOHN A. ROCKWELL,
Counsel for petitioner.

No. 1.

ASSISTANT QUARTERMASTER'S OFFICE,
Indianola, Texas, May 2, 1856.

COLONEL: Your letter of the 14th April has to-day reached me.

When passing through San Attonio the claim was spoken of to you and you stated that the commanding general would not recognize it. I therefore declined to give any information, unless called on for it from your office.

On the 24th June, 1855, I sent to Major W. W. Chapman, acting commissary and assistant quartermaster, a letter.

I received from Major W. W. Chapman, in answer, a letter dated July 10, 1855.

I nobedience to that letter I requested Lieutenant T. G. Pitcher, 8th infantry, regimental quartermaster at Fort Davis, to notify F. Samaniego to be at Fort Clark with his train. F. Samaniego reported to me with his train on the 22d August, and awaited at Fort Clark for a load to Fort Davis until 25th November, 1855.

I also addressed Major W. W. Chapman, acting commissary and assistant quartermaster, a letter under date September 3, 1855, and received a note in reply, stating that the roads were so wet that it was impossible to hire citizen transportation, or put government wagons on the road.

The first stores that arrived were given to Samaniego to haul.

Whilst at Fort Clark idle three citizens' trains were at San Antonio awaiting loads, and the only way that Samaniego could have obtained a load would have been to go to Corpus Christi for it; and the department were hauling by private teams at that time from Corpus, but wagons stuck in mud. He spoke to me on the subject, but I gave him no inducement, it not being my business.

I think, from the fact of other trains being idle and not able to obtain loading, justice would only allow F. Samaniego a claim for the hire of men and rations from August 22 to November 25, 1855, three months and three days.

I am, with respect, your obedient servant,

W. K. VAN BOKKELEN,
Captain, Assistant Quartermaster.

Lieutenant Colonel A. C. MYERS,
Chief Assistant Quartermaster, San Antonio.

A true copy.

A. C. MYERS,
Brevet Colonel, Assistant Quartermaster.

TREASURY DEPARTMENT,
Third Auditor's Office, June 24, 1858.

I hereby certify that the foregoing is truly copied from a copy of the original on file in this office.

ROBERT J. ATKINSON, *Auditor.*

No. 2.

ASSISTANT QUARTERMASTER'S OFFICE,
Fort Clark, Texas, June 24, 1855.

MAJOR: F. Samaniego is here with his train, and will leave for Fort Davis about the 10th July, returning to this post 20th of August. He wishes to know if a load will be here at that time for him, if not, he will not return.

W. K. VAN BOKKELEN,
Captain, Assistant Quartermaster.

Major W. W. CHAPMAN,
Acting Chief Assistant Quartermaster, Corpus Christi.

TREASURY DEPARTMENT,
Third Auditor's Office, June 24, 1858.

I hereby certify that the foregoing is truly copied from the original on file in this office.

ROBT. J. ATKINSON, *Auditor.*

No. 3.

[Extract.]

ASSISTANT QUARTERMASTER'S OFFICE,
Corpus Christi, Texas, July 10, 1855.

CAPTAIN: Your letter of June 24th was duly received. Please inform F. Samaniego that there will be a load for his train at Fort Clark by the 20th of August.

* * * * *

W. W. CHAPMAN,
Acting Chief Assistant Quartermaster, Department of Texas.

Captain W. K. BOKKELEN,
Assistant Quartermaster, Fort Clark, Texas.

A true copy.

W. K. VAN BOKKELEN,
Captain, Assistant Quartermaster.

TREASURY DEPARTMENT,
Third Auditor's Office, June 24, 1858.

I hereby certify that the foregoing is truly copied from the original on file in this office.

ROBT. J. ATKINSON, *Auditor.*

No. 4.

ASSISTANT QUARTERMASTER'S OFFICE,
Indianola, Texas, August 23, 1856.

SIR: I certify that you reported to me with a train of (17) seventeen wagons, on the 2^d August, 1855, and waited for loads until November 25, 1855, at Fort Clark, Texas.

W. K. VAN BOKKEMEN,
Captain, Assistant Quartermaster.

F. SAMANIEGO.

TREASURY DEPARTMENT,
Third Auditor's Office, June 24, 1858.

I hereby certify that the foregoing is truly copied from the original on file in this office.

ROBT. J. ATKINSON, *Auditor.*

No. 5.

[Extract.]

ASSISTANT QUARTERMASTER'S OFFICE,
Fort Clark, Texas, September 3, 1855.

MAJOR: In your letter of July 10, you say: "Please inform F. Samaniego that there will be a load for his train at Fort Clark by the 20th August." I accordingly did so and the train arrived here on the 22d, and nothing has been heard of any stores coming forward for his train.

* * * * *

W. K. VAN BOKKELEN,
Captain, Assistant Quartermaster.

Major W. W. CHAPMAN,
Acting Chief Assistant Quartermaster, Corpus Christi.

A true copy.

W. K. VAN BOKKELEN,
Captain, Assistant Quartermaster.

TREASURY DEPARTMENT,
Third Auditor's Office, June 24, 1858.

I hereby certify that the foregoing is truly copied from the original on file in this office.

ROBT. J. ATKINSON, Auditor.

ASSISTANT QUARTERMASTER'S OFFICE,
Indianola, Texas, October 1, 1856.

I certify that under instructions from Major W. W. Chapman, acting chief assistant quartermaster, department of Texas, dated July 10, 1855, I directed F. Samaniego to be at Fort Clark with his train by the 20th August, 1855, for load to Fort Davis, Texas.

He reported with seventeen large wagons on the 23d August, 1855, and awaited his loading until the 25th November, 1855; on that day he received the stores just received at Fort Clark from Corpus Christi, intended to be at Fort Clark by the 20th August, but delayed from bad weather and roads.

The terms of hauling were agreed on at the chief quartermaster's office, Corpus Christi, Texas.

W. K. VAN BOKKELEN,
Captain, Assistant Quartermaster.

TREASURY DEPARTMENT,
Third Auditor's Office, June 24, 1858.

I hereby certify that the foregoing is truly copied from the original on file in this office.

ROBT. J. ATKINSON, Auditor.

No. 6.

ASSISTANT QUARTERMASTER'S OFFICE,
Corpus Christi, Texas, December 28, 1855.

COLONEL: I enclose you a letter from Mr. F. Samaniego, (a Mexican gentleman,) which I hope will meet with your very favorable consideration. By direction of the general, I have made a verbal contract with Mr. Samaniego to haul all our supplies for one year from Fort Clark to Fort Davis. When we heard of the Giddings and Jefferson contract, Mr. Samaniego let me off from the contract, and I promised him, with the approval of the general, to give him all the hauling I could. He came down to Fort Clark at my request, but it seems there were no stores there for him, and he has waited three months. He might be satisfied if you would give him a few trips from Fort Clark to Fort Davis.

W. W. CHAPMAN,
Assistant Quartermaster.

Lieutenant Colonel A. C. MYERS,
Chief Assistant Quartermaster, San Antonio.

TREASURY DEPARTMENT,
Third Auditor's Office, June 24, 1858.

I certify that the foregoing is truly copied from a copy of a copy on file in this office.

ROBT. J. ATKINSON, *Auditor.*

No. 7.

QUARTERMASTER GENERAL'S OFFICE,
Washington City, January 25, 1856.

In a letter of Captain Van Bokkelen to Brevet Major Belger, dated the 2d instant, he states that he was instructed by you that you had made a contract with F. Samaniego to transport all supplies from the depot at Fort Clark to Fort Davis; that he would reserve all loading for said person. This contract has never been received, and you are instructed to send it without delay. It is presumed that it was, as all such contracts should be, made in writing; and the law requires all contracts made to be reported in the Second Comptroller's office within ninety days, and also that annual reports of them be submitted to Congress at each session. It is also feared that this contract may conflict with the rights of Giddings & Co., under their contract.

By order:

CHAS. THOMAS,
Deputy Quartermaster General.

Major W. W. CHAPMAN,
Assistant Quartermaster, Corpus Christi, Texas.

TREASURY DEPARTMENT,
Third Auditor's Office, June 24, 1858.

I hereby certify that the foregoing is truly copied from a copy of the original on file in this office.

ROBT. J. ATKINSON, *Auditor.*

No. 8.

QUARTERMASTER GENERAL'S OFFICE,
Washington, January 25, 1856.

Your letter, dated the 6th instant, enclosing a copy of one addressed to you by Captain Van Bokkelen, in relation to contracts for transportation of supplies in Texas, is received.

When contracts are entered into by the authorized agents of the department they should be carried into effect by all parties concerned; consequently, you should have notified the officers at the different points embraced in Giddings & Co.'s contract of its existence, without waiting for instructions from Major Chapman; it was not necessary to ask him whether it was "expected" of you to do so, and especially as you did not receive any reply from him.

The contract with F. Samaniego, mentioned in Captain Van Bokkelen's letter, has not reached this office.

By order:

CHARLES THOMAS,
Deputy Quartermaster General.

Major JAMES BELGER,
Assistant Quartermaster, San Antonio, Texas.

TREASURY DEPARTMENT,
Third Auditor's Office, June 24, 1858.

I hereby certify that the foregoing is truly copied from a copy of the original on file in this office.

ROBT. J. ATKINSON, *Auditor.*

No. 9.

ASSISTANT QUARTERMASTER'S OFFICE,
Corpus Christi, Texas, February 9, 1856.

GENERAL: I had the honor to receive this morning your letter of the 25th ult., and, in reply, would respectfully state that sometime in April last I made an offer to Mr. Samaniego, by direction of General Smith, to transport all our stores from Fort Clark to Fort Davis for one year, at six cents per pound. He accepted the offer so far as his own wagons were concerned, and said that if, after going to San Antonio and consulting his associates, they also accepted it, he would return to this place and make a formal written contract; and while at San Antonio he was to send his train to Fort Clark, so as to arrive there about the 10th May, which he did, and it took a load to Fort Davis. He returned from San Antonio to this place prepared to make the contract in writing; but, in the meantime, I received information of the contract made with Giddings & Co., and told Mr. Samaniego, frankly, how I was situated; also that I presumed the contract with those parties could not go into immediate effect, and that if he would relieve me from the verbal arrangement made with him, that I would give him all the freight I could without interfering with the contract of Giddings & Co. This he con-

sented to do. I told him that on the return of his train to Fort Clark from Fort Davis, there would probably be loading there for him, but it seems there was not, and his train remained there some months waiting for a load. He addressed me a letter on the subject, which I referred to Colonel Myers, with a letter of my own, of which the enclosed is a copy. All my letters to Captain Van Bokkelen on this subject are in the letter-book of the chief assistant quartermaster at San Antonio, but, as near as I remember, they amount to instructions to give Mr. Samaniego loading if possible.

My course in this transaction met with the approval of General Smith, to whom I respectfully refer you, if the above is not entirely satisfactory.

W. W. CHAPMAN,
Brevet Major and Assistant Quartermaster.

Major General THOMAS S. JESUP,
Quartermaster General, United States Army, Washington.

TREASURY DEPARTMENT,
Third Auditor's Office, June 24, 1858.

I hereby certify that the foregoing is truly copied from a copy of the original on file in this office.

ROBT. J. ATKINSON, *Auditor.*

No. 10.

QUARTERMASTER GENERAL'S OFFICE,
Washington City, February 27, 1856.

I have received your letter dated the 9th instant, which is entirely unsatisfactory. You have violated the law in not sending the contract to this office to be deposited in the treasury. You had no right to make a verbal contract; and if you, from the necessities of the service, were compelled to employ any one for a single trip, or for more than one trip, it was your duty to include him and his means of transportation in your monthly reports.

In this case, it now appears that a verbal contract, illegally made, has been going on for a whole year without any notice having been given of it to this office, and that as late as the 28th of December last you had continued this illegal contract. Now, sir, there must be an end to all measures so objectionable.

THOMAS S. JESUP,
Quartermaster General.

Major W. W. CHAPMAN,
Assistant Quartermaster, Corpus Christi, Texas.

TREASURY DEPARTMENT,
Third Auditor's Office, June 24, 1858.

I hereby certify that the foregoing is truly copied from a copy of the original on file in this office.

ROBT. J. ATKINSON, *Auditor.*

No. 11.

OFFICE OF ASSISTANT QUARTERMASTER,
Department of Texas, San Antonio, December 19, 1856.

SIR: I enclose herewith a claim of Fernando Samaniego for demurrage with a train of seventeen ten-mule wagons at Fort Clark, Texas; letters from Major W. W. Chapman, assistant quartermaster, and Captain Van Bokkelen, assistant quartermaster, accompanying the claim on the basis on which it is founded. Without regard to the several items in the account, which make up the sum charged, it appears just that a daily sum for each wagon should be allowed as demurrage while awaiting at Fort Clark the orders of officers in the quartermaster's department to load with and transport public supplies. It will be perceived that the certificates of Captain Van Bokkelen, giving the dates at which the wagons were reported to him, vary one day; but the extreme date, nevertheless, that the wagons were detained at Fort Clark make one day more, taking from 23d of August to 25th November, than is charged in the account herewith. The item charged for forage and issue of twelve pounds a day to each mule ought not to be admitted; the price paid for corn at Fort Clark by the quartermaster's department, at the time the citizens' train was there, was \$1 10 and \$1 20 per bushel. The issue of twelve pounds of corn to each mule can scarcely be the custom of citizens in feeding their animals, particularly at the season of the year when grass is abundant. My orders to officers in the department are not to feed grain to the public animals when grass is good and they are not at work. It would seem equitable, in reference to the charge for forage, to believe that the transporters, in daily expectation of being called on to load their wagons and to start on any trip, would endeavor to have their animals in strength and condition to do their work, and, with such view, feed some grain daily to them, say four or five pounds for each animal.

A. C. MYERS,

Brevet Colonel, Assistant Quartermaster.

Major General THOMAS S. JESUP,

Quartermaster General, Washington.

TREASURY DEPARTMENT,

Third Auditor's Office, June 24, 1858.

I hereby certify that the foregoing is truly copied from a copy of the original on file in this office.

ROBT. J. ATKINSON, *Auditor.*

No. 12.

QUARTERMASTER GENERAL'S OFFICE,

Washington City, January 7, 1857.

I have received your letter of the 19th of last month, enclosing the claim of Fernando Samaniego for the detention of ten mule wagons at Fort Clark for 92 days. Mr. Samaniego may have a just claim against Major Chapman, but he has no just claim against the public.

Every man is supposed to understand the laws of the country, and if he disregards them he acts in his own wrong, and the government is not responsible for his neglect. Major Chapman had no legal right to make a verbal contract with any one. The law requires all contracts to be deposited in the Second Comptroller's office within ninety days after their date. No such contract as that referred to has been forwarded. Nor is there any such contract on file in the Comptroller's office. An officer may start a single train, and the bill of lading will be a valid engagement for that transaction; but for successive trains, or for labor to be performed beyond the immediate time when the engagement is made, a written contract is necessary; and that, too, after public notice inviting competition. Major Belger informed Major Chapman of the contract with Giddings and Jefferson, made by authority of the Secretary of War as early as May, 1855, and although there was no legal contract with Samaniego, the major directed Captain Van Bokelen to detain his train, when to do so was in violation of a contract legally made with Giddings and Jefferson. The transaction can never be recognized here. Major Chapman having acted in the matter without authority, and in violation of law, is legally responsible for any damage Mr. Samaniego may have sustained—not the sum he claims, but the actual cost of the detention. I will retain the papers subject to your orders.

THOS. S. JESUP,
Quartermaster General.

Lieutenant Colonel A. C. MYERS,
Principal Assistant Quartermaster, San Antonio, Texas.

TREASURY DEPARTMENT,
Third Auditor's Office, June 24, 1858.

I hereby certify that the foregoing is truly copied from a copy of the original on file in this office.

ROBT. J. ATKINSON, *Auditor.*

No. 13.

QUARTERMASTER GENERAL'S OFFICE,
Washington City, April 22, 1857.

SIR: In compliance with the request expressed in your letter of the 15th instant, I enclose a copy of a letter from Lieutenant Colonel A. C. Myers, dated the 19th December, 1856, submitting a claim of Fernando Samaniego for the detention of a train of wagons and mules at Fort Clark from the 22d of August to the 24th of November, 1855, and believing that to a full understanding of the case other papers were necessary, I have added copies of papers on the subject, numbered from 1 to 7, and from 9 to 13, the contents of which are indicated on the accompanying list, marked A. Considering the whole transaction wrong, I have never recognized it, and being for damages, I consider it a case with which the Treasury Department has properly nothing to do. It is a case which Congress alone has a right to decide. A

contract to be legal must be in writing, and the original must be deposited within ninety days in the office of the Second Comptroller; this was not done, but the contract, as it is called, is said to have been verbal. If that was so, the person employed with his train should have been reported on the monthly reports. No monthly report received at this office from Major Chapman contains the slightest allusion to Mr. Samaniego as employed by the department. Never having recognized the claim, I have not included it in any estimate, and there is consequently no money which can be legally applied to the payment of it.

I have the honor to be, sir, your obedient servant,

THOS. S. JESUP,
Quartermaster General.

R. J. ATKINSON, Esq.,
Third Auditor, Treasury Department.

TREASURY DEPARTMENT,
Third Auditor's Office, June 22, 1858.

I hereby certify that the foregoing is truly copied from the original on file in this office.

ROBT. J. ATKINSON, *Auditor.*

No. 14.

QUARTERMASTER GENERAL'S OFFICE,
Washington, January 23, 1857.

SIR: Your letter dated yesterday, enclosing a power of attorney from Mr. F. Samaniego, in relation to a claim sometime since referred to this office by Lieutenant Colonel A. C. Myers, and requesting that all the papers in the case be transmitted to you, with such reasons for its rejection as the quartermaster general may think proper to communicate to you, is received, and I herewith enclose the original claim as received from Lieutenant Colonel Myers, with the letters received from him with the claim—seven papers in all. The transaction has not been recognized in this office as legal or binding, inasmuch as no contract or agreement was made by the officer under whose directions it appears to have originated.

I return the power of attorney agreeably to your request.

By order:

CHAS. THOMAS,
Assistant Quartermaster General.

RICHARD BURGESS, Esq.,
Washington City, D. C.

TREASURY DEPARTMENT,
Third Auditor's Office, June 24, 1858.

I hereby certify that the foregoing is truly copied from the original on file in this office.

ROBT. J. ATKINSON, *Auditor.*

No. 15.

The United States to Fernando Samaniego, Dr.

To expenses and damages incurred by detention of trains of seventeen wagons, of ten mules each, at Fort Clark, Texas, from — to — as follows, to wit:

To wages of 24 men, at \$25 per month each, three months and two days.....	\$1,839 84
To subsistence for 24 men, at 25 cents per day.....	532 00
To forage for 180 mules and horses, three months and two days, at the rate of 12 pounds corn each per day, at \$1 50 per bushel.....	5,349 64
To wages of overseer, at \$100 per month, for three months and two days.....	306 66
To subsistence of overseer, for three months and two days	23 00
To demurrage, at \$5 per day, for wagons and teams, 92 days.....	7,820 00
Sum total.....	<u>15,871 14</u>

STATE OF TEXAS, *County of Bexar*:

Before me, the undersigned authority, an acting justice of the peace in and for the said county, personally appeared Fernando Samaniego, to me known, and to whose credibility I hereby certify, who, after being first duly sworn, upon his oath, says: That the foregoing account of fifteen thousand eight hundred and seventy-one dollars and fourteen cents, (\$15,871 14,) in his favor and against the United States, is just, true, and correct; that the items charged as expenses incurred during the said detention are correctly stated, and the amounts charged therefor are the actual sums expended during and by reason of said detention; and that the item charged for demurrage is not only just and reasonable, but actually less than one-third of the receipts and revenue derived from said wagons and teams when in service under my contract with said government.

FERNANDO SAMANIEGO.

Sworn to and subscribed before me this 15th day of November, 1856.

JAS. E. GARDNER, *J. P. B. C.*STATE OF TEXAS, *County of Bexar*:

I, Samuel S. Smith, clerk of the county court of said county, do hereby certify that Jas. E. Gardner, esq., before whom the foregoing affidavit was made, and whose genuine signature is thereunto subscribed, was at the date of so doing a justice of the peace in and for said county, duly commissioned and sworn, and that said county court is a court of record.

In testimony whereof, I have hereunto signed my name and affixed
[L. s.] the seal of said county, at office in San Antonio, this 15th
day of November, A. D. 1856.

SAM. S. SMITH,
Clerk of County Court, Bexar County,
By EDWARD MILES, *Deputy.*

STATE OF TEXAS, *County of Bexar:*

Before me, the undersigned authority, an acting justice of the peace in and for said county, personally appeared Geo. T. Howard, to me well known, and to whose credibility I hereby certify, who, after being first duly sworn, upon his oath says: That the last item in the account hereto attached, to wit: demurrage at \$5 per day, is a fair and just charge, it being only about one-third of the amount that each wagon and team makes per day under such contracts.

GEO. T. HOWARD.

Sworn to and subscribed before me this 19th day of November, A. D. 1856.

C. E. JEFFERSON, *J. P. B. C.*

STATE OF TEXAS, *County of Bexar:*

I, Sam. S. Smith, clerk of the county court of said county, do hereby certify that C. E. Jefferson, esq., before whom the foregoing affidavit was made, and whose genuine signature is thereunto subscribed, was at the date of so doing a justice of the peace in and for said county and State, duly commissioned and sworn, and that said county court is a court of record.

In testimony whereof, I have hereunto signed my name and affixed
[L. s.] the seal of said county court, at office in San Antonio, this
19th day of November, A. D. 1856.

SAM'L S. SMITH,
Clerk of County Court, Bexar County.

STATE OF TEXAS, *County of Bexar.*

Before me, the undersigned authority, an acting justice of the peace within and for the county of Bexar and State aforesaid, personally appeared A. Daguere, to me well known, and to whose credibility I hereby certify, who, after being duly sworn, upon his oath says: That he has examined the foregoing and annexed account, in favor of Fernando Samaniego and against the United States government, and believes the same to be just, true, and correct. That he knows and is well acquainted with said Samaniego, and knows that he was engaged in transporting government stores with his wagon trains from Fort Clark to Fort Davis, Texas; that each of his wagons will carry and do carry 5,000 pounds of freight each; and that his said train consists of seventeen wagons, with teams to correspond, say ten mules to each team; and that the trip from the fort to the fort aforesaid can be, and usually is, made by said train in eighteen days.

And further, that affiant has seen and examined the contract of said Samaniego with the said government, and knows the contract

price for hauling the stores aforesaid to and from the forts aforesaid to be six (6) cents per pound.

A. DAGUERE.

Sworn to and subscribed before me this 15th day of November, A. D. 1856.

JAS. E. GARDNER, *J. P. B. C.*

STATE OF TEXAS, *County of Bexar:*

I, Sam. S. Smith, clerk of the county court of said county, do hereby certify that Jas. E. Gardner, esq., before whom the foregoing affidavit was made, and whose genuine signature is thereunto subscribed, was at the time of signing the same a justice of the peace in and for the county and State aforesaid, duly commissioned, qualified, and sworn, and that said county court is a court of record.

To certify to which, I have hereunto signed my name and affixed the seal of the county court of said county, at office in San [L. s.] Antonio, this 15th day of November, A. D. 1856.

SAM. S. SMITH,

Clerk of County Court, Bexar County,
By EDWARD MILES, *Deputy.*

TREASURY DEPARTMENT,

Third Auditor's Office, June 23, 1858.

I hereby certify that the foregoing is truly copied from the original on file in this office.

ROBT. J. ATKINSON, *Auditor.*

No. 16.

Report of the Third Auditor of the Treasury on the claim of Fernando Samaniego for expenses and damages alleged to have been incurred by the detention of a train, consisting of seventeen wagons, of ten mules each, while waiting at Fort Clark, Texas, for a load of public stores for Fort Davis, between August 23 and November 25, 1855, three months and two days, amounting to \$15,871 14.

Received March 21, 1857, from Richard Burgess, esq.

The claim consists of the following items, viz:

To wages of 24 men, at \$25 per month each, three months and two days	- - - - -	\$1,839 84
Subsistence for 24 men, at 25 cents per day	- - - - -	532 00
Forage for 180 mules and horses, 3 months and 2 days, at the rate of 12 pounds corn each per day, at \$1 50 per bushel	- - - - -	5,349 64
Wages of overseer, at \$100 per month, for three months and two days	- - - - -	306 66
Subsistence for overseer for three months and two days	- - - - -	23 00
Demurrage at \$5 per day for wagons and teams, 92 days	- - - - -	7,820 00
Sum total	- - - - -	<u><u>15,871 14</u></u>

The claimant makes oath to the correctness of the several items ; and affidavits by George T. Howard and A. Daguere, whose credibility is certified to, are also filed in support of the claim. Also the following certificate :

ASSISTANT QUARTERMASTER'S OFFICE,
Indianola, Texas, October 1, 1856.

I certify that under instructions from Major W. W. Chapman, acting chief assistant quartermaster, department of Texas, dated July 10, 1855, I directed F. Samaniego to be at Fort Clark with his train by the 20th August, 1855, for loads to Fort Davis, Texas. He reported with 17 large wagons, and awaited his loading until 25th November, 1855. On that day he received the stores just received at Fort Clark from Corpus Christi, intended to be at Fort Clark by the 20th August, but delayed from bad weather and roads. The terms of hauling were agreed on at the chief quartermaster's office, Corpus Christi, Texas.

W. H. VAN BOKKELEN,
Captain, Assistant Quartermaster.

The papers relating to the claim were forwarded by Colonel A. C. Myers to the quartermaster general, who enclosed them to the attorney, Mr. Burgess, with the remark that "the transaction has not been recognized in this office" (the quartermaster general's) "as legal or binding, inasmuch as no contract or agreement was made by the officer under whose directions it appears to have originated." It appears that the claimant had been engaged with his train in hauling for the quartermaster's department, from Fort Clark to Fort Davis, prior to the time when this claim arose ; but concerning the arrangement or agreement under which he rendered such services, nothing is known except, that the terms of hauling were agreed on at the chief quartermaster's office at Corpus Christi, as stated by Captain Van Bokkelen in the foregoing certificate, and that the rate was six cents per pound, as shown by the vouchers for the payments.

To go no further back, on the 17th of May, 1855, he received at Fort Clark, for transportation, 55,528 pounds of public stores, which were delivered at Fort Davis on the 7th of June following ; and on the 14th of July he received another load at Fort Clark, consisting of 59,534 pounds, which was delivered at Fort Davis on the 7th August, 1855. For the hauling of these loads he was paid at six cents per pound, \$3,331 68 for the first, and \$3,572 04 for the second, making an aggregate of \$6,903 72 for the two loads. These facts are learned from the accounts of Captain Van Bokkelen and Lieutenant F. G. Pitcher ; those which follow are derived from the papers herewith. On the 24th of June, 1855, and after the delivery of the first of the above-mentioned stores, Captain Van Bokkelen wrote to Major W. W. Chapman, at Corpus Christi, stating that Mr. Samaniego was then at Fort Clark with his train, and would start with a load for Fort Davis about the 10th of July, returning to that post (Fort Clark) about the 20th of August, and wished to know if a load would be there at that time for him, and if not, he would not return. In reply, July 10,

Major Chapman requested Captain Van Bokkelen to inform Mr. S. that there would be a load for his train at Fort Clark by the 20th August, and being notified accordingly, the claimant, after having delivered the before-mentioned load at Fort Davis on the 9th of August, returned with his train to Fort Clark on the 23d of August. The stores which were to furnish the loading, however, had not been forwarded from Corpus Christi, and their arrival was awaited by the train. On the 3d of September Captain Van Bokkelen wrote to Major Chapman, who stated, in reply, that "the roads were so wet that it was impossible to hire citizen transportation or put government wagons on the road." It seems that under these circumstances the claimant thought of going to Corpus Christi for the stores, and that he mentioned the subject to Captain Van Bokkelen, who states that he gave him no inducement to go, it not being his business. He continued at Fort Clark until the 25th of November, about three months and two days from the date of his arrival there, when a load for his train was obtained, the first stores that were received being given to him to haul.

The papers furnish no evidence that after the claimant's arrival at Fort Clark with his wagons and teams any inducement was held out to him to wait for the stores, other than the pecuniary benefit which by so doing he would be enabled to derive from their transportation. That he did remain is established beyond doubt, however, and the only difficulty is in determining whether, under the circumstances, he is entitled to indemnity, and if yea, whether he can receive it through the accounting officers of the treasury. If the claim be considered as *for damages*, it is well settled that relief can only be granted by Congress. The Quartermaster General considers it a case of this kind, and reports against it on that ground. It is true he takes other exceptions to the claim, but whether they be well founded or not is not material if it be considered as a claim for "damages." It is suggested by Mr. Burgess, the attorney, that it is a claim for *demurrage*, growing out of an undue detention of the teams, wagons, &c., belonging to Samaniego; but in my opinion that will depend upon whether or not there was a valid contract. Claims for demurrage cannot properly accrue except there be a contract on which to predicate it. It is admitted that no written contract was made for the transportation of any specific stores, or at any specific time, but it is alleged that there was some "verbal contract," the terms of which are not made known. There is nothing which indicates that Mr. Samaniego was under any obligation to remain in waiting for the stores, or that a failure on his part so to remain would have involved him in any liability to the government in consequence thereof. Upon such a state of facts it is hardly to be considered as a contract, whether verbal or written, such as would be necessary in order to base a claim for demurrage. A contract implies mutuality of obligation. But even if there were a contract, verbal or written, the claim as set up might well be considered in the nature of *damages*. Such claims arise from breaches of contracts more frequently perhaps than from any other source. And in all such cases, as before remarked, the accounting officers take no jurisdiction. I do not consider it necessary

to consider the merits of the claim further in the present report, but transmit the papers herewith, with these remarks for your consideration, in connexion with the legal questions involved, as preliminary to any further investigation.

ROBERT J. ATKINSON, *Auditor.*

JOHN M. BRODHEAD, Esq.,
Second Comptroller of the Treasury.

TREASURY DEPARTMENT,
Third Auditor's Office, May 1, 1857.

Decision of Second Comptroller.

I have examined with much care all the documents in this case. The whole proceedings are of an irregular and slipshod character, properly rebuked by the Quartermaster General, and this cannot, I think, be considered of the dignity of a contract binding upon the United States, as most of it appears to me that all that can be gathered from the correspondence and indefinite verbal understanding (which always end in misunderstandings) is, that Mr. Samaniego would be employed when loading could be furnished at Fort Clark, and that Major Chapman expected that he would have a load at that place for the train by the 20th August, instead of the 25th of November, 1855. In fact, Major Chapman, in his letter to the Quartermaster General, dated February 9, 1856, says, in reference to his letter to Capt. Van Bokkelen, that as near as I remember they amount to "instructions to give Mr. Samaniego loading if possible." And he states in substance, in a previous part of the same letter, that he had promised this conditional freight because he could not enter into the formal written contract, which, it seems, both parties had contemplated, but the making of which was frustrated by the contract with Giddings & Co. But the point made by the Auditor is unanswerable: every contract is founded upon *mutual* agreement of parties, carrying with it reciprocal liabilities, and, as the Auditor well observes, implies mutuality of obligation. It will not be pretended that Mr Samaniego would have been liable for damages to the United States if his train had not appeared at all at Fort Clark in August, 1855, or if, after it reached there, it had left without waiting an hour for loading to arrive.

The claim is one of demurrage, even if the term be applicable in cases of transportation by land cannot be sustained. To be valid it must be founded on *express* agreement. Demurrage, properly so called, arises out of the terms of a contract between a ship-owner and a freighter, or from a stipulation in the bill of lading, and the master of a ship who undertakes by a bill of lading to deliver goods to the consignee on payment of freight cannot maintain an action against the latter for an *implied* contract to pay demurrage. There must be an *express* stipulation to that effect to create a legal liability to pay demurrage, though if a ship be improperly detained by the freighter or consignee, the owner may have a special action for the *damages* resulting from such detention.

That Mr. Samaniego suffered a very considerable loss by the delay his train experienced is undoubtedly true; but if he has a just claim against the United States for the detention, it must unquestionably be in the nature of damages, and therefore not be adjudicated by the accounting officers. Congress alone can afford him relief. Nor do I think that the executive officers of the government should recognize, no further than they are legally bound to do, such vague and careless transactions on the part of disbursing officers, giving rise inevitably to questions of much embarrassment and involving a probable waste of the public money.

J. M. BRODHEAD, *Comptroller*.

MAY 6, 1857.

TREASURY DEPARTMENT,
Third Auditor's Office, June 23, 1858.

I hereby certify that the foregoing is truly copied from the original on file in my office.

ROBT. J. ATKINSON, *Auditor*.

IN THE COURT OF CLAIMS.

FERNANDO SAMANIEGO vs. THE UNITED STATES.

Petitioner's brief.

This claim is based solely upon the engagement entered into by Captain and Assistant Quartermaster Bokkelen and Major and Assistant Quartermaster W. W. Chapman, as shown by their correspondence.

A verbal contract had been made by Major Chapman with the petitioner for one year by the order of General Persifer F. Smith, but Major Chapman, instead of fulfilling that contract, or even reducing it to writing, found that he had made some mistake in relation to it, and requested to be released from that contract; to which, as it is stated, the petitioner assented. However this may be, the present claim is not based upon that contract for a year's service, and all the reports of the Auditor, Comptroller, Quartermaster General, &c., in relation to that contract, have no bearing upon the claim of the petitioner.

There was a contract made for a specified service by officers authorized to make it, and that contract has been violated.

1. Was there a contract made?

That there was one is shown by the following correspondence, (pp. 6 and 7 of Record:)

“ ASSISTANT QUARTERMASTER'S OFFICE,
Fort Clark, Texas, June 24, 1855.

“ MAJOR: F. Samaniego is here with his train, and will leave for Fort Davis about the 10th July, returning to this post 20th August.

He wishes to know if a load will be here at that time for him; if not, he will not return.

“W. K. VAN BOKKELEN, *Capt. A. Q. M.*

“Major W. W. CHAPMAN,

“*Actg. C. A. Q. M., Corpus Christi.*”

“ASSISTANT QUARTERMASTER’S OFFICE,

“*Corpus Christi, Texas, July 10, 1855.*

“CAPTAIN: (Extract.) Your letter of June 24 was duly received. Please inform F. Samaniego that there will be a load for his train at Fort Clark by the 20th of August.

* * * * *

“W. W. CHAPMAN,

“*Act. Chief A. Q. M., Department of Texas.*

“Captain W. K. VAN BOKKELEN,

“*A. Q. M., Fort Clark, Texas.*”

“ASSISTANT QUARTERMASTER’S OFFICE,

“*Indianola, Texas, August 23, 1856.*

“SIR: I certify that you reported to me with a train of (17) seventeen wagons on the 22d August, 1855, and waited for loads until November 25, 1855, at Fort Clark, Texas.

“W. K. VAN BOKKELEN,

“*Capt. A. Q. M.*

“F. SAMANIEGO.”

“ASSISTANT QUARTERMASTER’S OFFICE,

“*Fort Clark, Texas, September 3, 1855.*

“MAJOR: (Extract.) In your letter of July 10th you say: ‘Please inform F. Samaniego that there will be a load for his train at Fort Clark by the 20th of August.’ I accordingly did so, and the train arrived here on the 22d, and nothing has been heard of any stores coming forward for his train.

“W. K. VAN BOKKELEN,

“*Capt. A. Q. M.*

“Major W. W. CHAPMAN,

“*Actg. Chief A. Q. M., Corpus Christi.*”

“ASSISTANT QUARTERMASTER’S OFFICE,

“*Indianola, Texas, October 1, 1856.*

“I certify that, under instructions from Major W. W. Chapman, acting chief assistant quartermaster, department of Texas, dated July 10, 1855, I directed F. Samaniego to be at Fort Clark with his train by the 20th August, 1855, for load to Fort Davis, Texas.

“He reported with 17 large wagons on the 23d August, 1855, and awaited his loading until 25th November, 1855. On that day he received the stores just received at Fort Clark from Corpus Christi, intended to be at Fort Clark by the 20th August, but delayed from bad weather and roads.

"The terms of hauling were agreed on at the chief quartermaster's office, Corpus Christi, Texas.

"W. K. VAN BOKKELEN, *Capt. A. Q. M.*"

It thus appears that this contract was not a "verbal contract," but a *written* one. The letter of Captain Bokkelen states that Samaniego wishes to know if a load will be at Fort Clark for him on the 20th August. Major Chapman replied, and requests Captain Bokkelen to inform Samaniego "that there will be a load for his train at Fort Clark by the 20th of August."

Capt. Bokkelen, in his letter to Major Chapman of the 3d September, says: "In your letter of July 10 you say, 'please inform F. Samaniego that there will be a load for his train at Fort Clark by the 20th of August.' I accordingly did so, and the train arrived here on the 22d, and nothing has been heard of any stores coming forward for his train."

In addition to this, Captain Bokkelen certifies on the 1st October, 1856, that Samaniego "reported with 17 large wagons on the 23d August, 1855, and awaited his loading until the 25th November, 1855."

If, therefore, the government could either *legally* or *honestly* escape the obligations arising from these acts of its officers on the ground that they are not bound by *verbal* contracts, (which is not admitted,) this ground would fail them in this case, because the contract here was in writing. The statutes of frauds, which require certain contracts with individuals to be in writing, would, according to the well-settled rules of law, be fully satisfied by a contract in the manner shown in this case.

This was a *positive* and *unconditional* engagement.

Major Chapman directed Captain Van Bokkelen to inform Samaniego that "*there will be a load for his train at Fort Clark by the 20th of August,*" and he does so inform him, and he comes with his seventeen teams at the time to fulfil the service agreed upon.

Major Chapman, in his letter of 9th February, 1856, to General Jesup, (Rec., p. 10,) is *mistaken* when he says, "I told him that on the return of his train from Fort Clark, Davis then would *probably* be loading there for him." The letters written show precisely what he did say, and it amounted, in substance, not only to a positive statement that there *would be*, but an *engagement* that there *should be*, a load for his team.

The Second Comptroller is equally mistaken on this subject. He says, (Rec., p. 29 :) "In fact, Major Chapman, in his letter to the Quartermaster General, dated February 9, 1856, says, in reference to his letter to Captain Van Bokkelen, that, or near as I remember, they amount to "instructions to give Mr. Samaniego loadings if possible;" and he states, in substance, in a previous part of the same letter, that he had promised this *conditional* freight, &c.

Now, in the first place, the Comptroller affects to give, *as near as he remembered*, the language of Major Chapman, and then substitutes Major Chapman's erroneous comments upon the letters evidencing the contract, when he must have had the very letters before him, which spoke for themselves, and showed both statements to be erroneous.

2. The contract entered into by Major Chapman was clearly and manifestly within his authority, not only from the nature of the duties assigned to him and the character of the services to be performed, but from the express provisions of the law, and the army regulations.—(See Brightly's Digest, pp. 64, 67, and army regulations, as to duties of this department.)

It is intrusted to the officers of that department "to purchase military stores, camp equipage, and other articles requisite for the troops, and generally to procure and provide means of transport for the army, its stores, artillery, and camp equipage." (P. 64.) They are required to give bonds for the faithful discharge of their duties. (P. 65.)

The transactions of this department are those which arise from day to day, and the officer of the quartermaster's department has necessarily intrusted to him the discharge of these daily duties. When he makes a contract for the transportation of military stores for the army in the field or for a military station hundreds or thousands of miles from Washington, must he wait for the approval by the head of the department at Washington, and is such contract void unless so approved? Cannot such an officer, with prudent forethought, engage such transportation in advance; and if it so happens that he cannot fulfil his engagement, is it void, and must the innocent person who has made the contract suffer? Such principles in relation to officers charged with such duties would be neither sensible nor just.

But the Quartermaster General says, (Rec., p. 137:) "A contract to be legal must be in writing, and the original must be deposited within ninety days in the office of the Second Comptroller." Again, (Rec., p. 129,) "The law requires all contracts to be deposited in the Second Comptroller's office within ninety days after their date. No such contract as that referred to has been forwarded, nor is there any such contract on file in the Comptroller's office."

It is supposed that the law referred to is found in the 6th section of the act of Congress of July 16, 1798, (1 Stat., 610,) which is—

"That all contracts to be made by virtue of this or of any law of the United States, and requiring the advance of money, or in any manner connected with the settlement of public accounts, shall be deposited in the office of the Comptroller of the Treasury within ninety days after their dates, respectively."

1st. The first answer to this is, that it does not, and from the nature of the case cannot, by possibility, apply to the contracts made from day to day by an officer in the quartermaster's department on a distant service. His duty is to buy provisions for the supply of the army. Must his contract for these provisions be forwarded to Washington, and be approved by the department here, and deposited in the Comptroller's office, before it is valid; and must the alternative be that the army shall suffer for want of the provisions, or the seller of them suffer because the *contract*, not having been deposited with the Comptroller, is void?

His duty is to see to the transportation of provisions and munitions of war. Must every *contract* as to these be in writing, and, before being valid, must it be sent to Washington to the Comptroller's office? If this is the law, as claimed by the Quartermaster General, his depart-

ment violates that law every day, and has done so since he has been in office, and so have all the officers of that department ever since it was organized, from the very nature of the duties to be performed and the necessity of the case. Never, in relation to any portion of the army, in the field or at military stations, has this extraordinary principle been applied, and was not so applied when these letters were written, and is not so applied to-day.

It must have been from gross inadvertence that the Quartermaster General shall have announced the principle that a contract by the quartermaster in command in Texas with a third person, to furnish a load for seventeen wagons from one place to another, was a void one, because it was not deposited within ninety days of its date with the Second Comptroller at Washington.

If the principle is a sound one, he is violating the law daily ; if an unsound one, he has done this petitioner a great injustice.

2d. But there is another answer to this, even if this were one of the contracts referred to in the statute. This section, as to depositing contracts with the Second Comptroller, is *directory* merely upon the public officers, and not essential to the validity of contracts. It not only is not declared by the law to be essential to the validity of any contract that it be so deposited, but the very nature of the provision shows that it is for the mere convenience of the government that the contracts referred to should be found in one place. It requires no act on the part of the Comptroller to give validity to the contract. Besides, the act of deposit is one which is to be done by an officer of the government, and it would be most unreasonable to give such a construction as would make an innocent contractor a sufferer by the culpable omission of an agent of the other party. Such a construction would be dishonorable to the government, as it would, in the worst sense, enable a party to take advantage of his own wrong.

3d. But the other reasons for refusing this claim by the Quartermaster General are not less extraordinary and untenable. In his letter of February 27, 1856, to Major Chapman, he says: "*You had no right to make a verbal contract.*" It is not very material whether he had or not, in relation to the one to which he here refers, for one year, since that contract, before being reduced to writing, was, at Major Chapman's request, abandoned. "*And if you, from the necessities of the service, were compelled to employ any one for a single trip, or more than one trip, it was your duty to include him and his means of transportation in your monthly reports.*"

Here is distinctly recognized the authority, if he deemed it necessary, to employ any one, not only for one trip, but for more than one trip. But it would seem to be the notions of the law in that department that if not included in his "monthly report," it would thereby become illegal.

Again: "*In this case it now appears that a verbal contract, illegally made, has been going on for a whole year,*" &c. Nothing whatever of the kind appears, but precisely the reverse.

4th. But in his letter of the 7th January, 1857, the Quartermaster General very coolly turns over the petitioner to his claim against Major Chapman. He says: "*Mr. Samaniego may have a just claim*

against Major Chapman, but he has no just claim against the public. Every man is supposed to understand the laws of the country, and if he disregards them he acts in his own wrong, and that the government is not responsible for his neglect," &c. The supposition here referred to, that "every man understands the laws of the country," is a presumption in respect to this distinguished officer which his own letters must abundantly disprove. It is scarcely possible to find, in the same space, more bad law and mistaken statements of facts.

It is *not* the law that the government is not bound by the acts of its public officers, acting under its authority, and within the scope of that authority.

It is *not* the law that a contract, in other respects valid, is made invalid because the officer of the government making it fails to include it in his quarterly report.

It is *not* the law that a contract, otherwise valid, is made invalid by the omission on the part of the government to deposit the contract in the Comptroller's office.

It is *not* the law that all *verbal* contracts by a quartermaster in the daily and ordinary discharge of his duty are void; and if it were the law, it has no bearing upon this case, because the contract in question was a written one.

There is no charge whatever against the petitioner. The only complaints made are by the head of the quartermaster's department of one of his subordinate officers. The reproof, if not wholly undeserved, as it would indeed seem to be, is certainly unduly severe; but whether just or unjust, it is a poor reason for depriving a third person, charged with no wrong or negligence, of his just rights.

III. That this contract has been violated is not denied, and that the petitioner has suffered damage is also admitted. The statement of Col. Myers is as follows:

"OFFICE A. Q. M., DEPARTMENT OF TEXAS,
"San Antonio, December 19, 1856.

"SIR: I enclose herewith a claim of Fernando Samaniego for demurrage with a train of seventeen ten-mule wagons at Fort Clark, Texas. Letters from Major W. W. Chapman, assistant quartermaster, and Captain Van Bokkelen, assistant quartermaster, accompanying the claim, on the basis on which it is founded. Without regard to the several items in the account which make up the sum charged, it appears just that a daily sum for each wagon should be allowed as demurrage while awaiting at Fort Clark the orders of officers in the quartermaster's department to load with and transport public supplies. It will be perceived that the certificates of Captain Van Bokkelen, giving the dates at which the wagons were reported to him, vary one day; but the extreme date, nevertheless, that the wagons were detained at Fort Clark make one day more, taking from 23d of August to 25th November, than is charged in the account herewith.

"The item charged for forage and issue of twelve pounds a day to each mule ought not to be admitted. The price paid for corn at Fort Clark by the quartermaster's department at the time the citizens' train was there was \$1 10 and \$1 20 per bushel. The issue of twelve

pounds of corn to each mule can scarcely be the custom of citizens in feeding their animals, particularly at the season of the year when grass is abundant. My orders to officers in the department are not to feed grain to the public animals when grass is good and they are not at work.

"It would seem equitable in reference to the charge for forage, to believe that the transporters, in daily expectation of being called on to load their wagons and to start on any trip, would endeavor to have their animals in strength and condition to do their work, and, with such view, fed some grain daily to them—say four or five pounds for each animal.

"A. C. MYERS,
Brevet Colonel, A. Q. M.

"Major General TH. S. JESUP,
Quartermaster General, Washington."

If, as is stated by the accounting officers of the treasury, they are not authorized to make compensation for damages arising from a breach of contract, but the power rests alone in Congress, the case is clearly one which is appropriately before this court for decision, and to determine as to the amount of the damages sustained.

JOHN A. ROCKWELL,
Of Counsel for Petitioner.

IN THE COURT OF CLAIMS.

FERNANDO SAMANIEGO *vs.* THE UNITED STATES.

SOLICITOR'S BRIEF ON FINAL HEARING.

Claim for demurrage, that is, damages by reason of the quartermaster's department not furnishing loading to be transported by claimant's teams from Fort Clark to Fort Davis, in Texas.

FACTS AS UNDERSTOOD BY THE SOLICITOR.

First. That in 1855 W. W. Chapman, assistant quartermaster, made a verbal contract with the claimant to haul certain army supplies for one year from Fort Clark to Fort Davis, in Texas.—(Chapman's letter, Record, p. 8.)

Second. That on learning that a contract had been entered into by the government with Giddings & Jefferson, the claimant relinquished his contract with Chapman on a promise by the latter that he would give him all the hauling he could.—(Chapman's letter, Record, pp. 8 and 10.)

Third. Being at Fort Clark on the 24th of June, 1855, the claimant, through Captain Van Bokkelen, informed Major Chapman that he should return to that place on the 20th of August, and inquired if

there would be a load there for him at that time, and if not he would not return.—(Bokkelen's letter, Record, p. 6.)

Fourth. Major Chapman, on the 10th of July, answered Captain Bokkelen, and directed him "to inform the claimant that there would be a load for his train at Fort Clark by the 20th of August.—(Chapman's letter, Record, p. 6.)

Fifth. On the 3d of September, 1855, Captain Bokkelen, writing from Fort Clark to Major Chapman at Corpus Cristi, informed him that the claimant arrived at the former place on the 22d of August, and that nothing had been heard of any stores coming forward for his train.—(Bokkelen's letter, Record, p. 7.)

Sixth. That the claimant waited at Fort Clark with a train, consisting of 17 large wagons, from the 22d of August to the 25th of November, when he received stores for them to take to Fort Davis.—(Bokkelen's letter, Record, pp. 7, 8.)

Seventh. The stores were "delayed from bad weather and roads."—(Bokkelen's letter, Record, p. 8.)

Eighth. That there was a contract in writing with Giddings & Jefferson for transporting stores, which, by its terms, included the transportation of the stores in question, which was known to Major Chapman and to the claimant.—(Chapman's letter, Record, pp. 8 and 10; General Jesup's letter, Record, pp. 12, 13.)

Ninth. This transaction with Samaniego was repudiated by the Quartermaster's department as soon as it became known to it.—(General Jesup's letter, Record, pp. 12, 13; Colonel Thomas' letter, Record, p. 14.)

Tenth. There is no contract proved by which it was provided that there should be stores at Fort Clark for the claimant to transport.

Aside from the objection that there was no written contract, there is no proof of even a verbal one. Major Chapman says he promised "to give him all the hauling he could."—(Record, p. 8.)

The claimant, soon after the 10th of May, was at Corpus Christi, and went to San Antonio, and returned prepared to make a contract, when Major Chapman was informed of the contract entered into by the War Department with Giddings & Jefferson. Major Chapman says:

"He (the claimant) returned from San Antonio prepared to make a contract in writing, but in the meantime I received information of the contract made with Giddings & Co., and told Mr. Samaniego frankly how I was situated; also, that I presumed the contract with those parties could not go into immediate effect, and that if he would relieve me from the verbal arrangement made with him, I would give him all the freight I could without interfering with the contract of Giddings & Co.

"This he consented to. I told him that on the return of his train to Fort Clark there would probably be loading there for him; but it seems there was not, and his train remained there some months waiting for a load."—(Major Chapman's letter, Record, p. 10.)

Eleventh. The whole of this arrangement rested upon the condition that freight could be supplied without interfering with the contract of Giddings & Co.

But it is indisputable that the latter were entitled to the whole, and none could be so furnished without a violation by the government of that contract.

Again: Another condition was, that Major Chapman could furnish it. He could not furnish freight at Fort Clark unless it was there, and none was there, and it seems that owing to the weather and roads it could not be got there. The promise of Major Chapman was, not that he would cause freight to be got to Fort Clark, so that the claimant could get it, but that he would give him what was there to be taken if he could. He could not give it to him there if it were not there to be given.

Twelfth. The claimant was not under any obligation whatever to transport the stores in question. There was no reciprocal obligation on his part to perform any service. He could not have been sued and subjected to damages, if any were sustained, if he had refused to transport the stores. Major Chapman made no contract with him, but gave him to understand he would give him freight when he could. When he inquired if there would be stores at Fort Clark at a certain time, he said there would be, but he was not bound to have them there, nor even to give them to him, if they were, nor was the claimant under any legal obligation to be there and take them.

LEGAL PROPOSITIONS.

FIRST. *Except in cases of special necessity, no contract for transportation for the Quartermaster's department can be lawfully made except in writing and entered into upon public advertisement.*

The claimant proves that his contract, as he claims it to have been made, was a mere verbal promise, not reduced to writing, entered into after he and Major Chapman knew that the freightage legally belonged to Giddings & Co. under a binding contract. Several laws have been passed to prevent the making of such contracts, and for the purpose of rendering them null if entered into.

The act of July 16, 1798, (1 U. S. L., 610,) provides:

§ 3. "That all purchases and contracts for supplies or services for the military and naval service of the United States shall be made by or under the direction of the chief officers of the Departments of War and Navy, respectively, and all agents or contractors for supplies or services as aforesaid shall render their accounts for settlement to the accountant of the proper department for which such supplies or services are required, subject, nevertheless, to the inspection and revision of the officers of the treasury in the manner before described."

§ 6. "That all contracts to be made by virtue of this act, or of any law of the United States, and requiring the advance of money, or to be in any manner connected with the settlement of public accounts, shall be deposited in the office of the Comptroller of the Treasury of the United States, within ninety days after their dates, respectively."

The act of the 21st of April, 1808, (2 U. S. L., 484-'5,) forbids members of Congress being concerned in any contract with the United States, and requires the heads of departments to make annual state-

ments of the contracts they may enter into, "exhibiting in such statement the name of the contractor, the article or thing contracted for, the place where the article was to be delivered, or the thing performed, the sum to be paid for its performance or delivery, and the date and duration of the contract."

The act of March 3, 1809, (2 U. S. L., § 5,) provides:

"That all purchases and contracts for supplies or services which are or may, according to law, be made by or under direction of either the Secretary of the Treasury, the Secretary of War, or the Secretary of the Navy, shall be made either by open purchase or by previously advertising for proposals respecting the same."

It then provides for reporting to Congress.

The act of March 3, 1845, (5 U. S. L., 795, § 12,) regulates the mode of advertising.

The practical construction of these laws given by the War Department is the same now assumed, as will be found in the letters of General Jesup.—(Record, pp. 12 and 13.)

From these laws and their practical and uniform construction, it is clear that what the claimant assumes to have been a contract was a mere nullity. It was knowingly made, not only without the authority of law, but against the provisions of the statute, and is therefore a mere nullity, upon which no valid claim can be founded.

SECOND. Where the whole transportation had been regularly and legally contracted to another, no valid contract could be subsequently given to a third party for any portion of such transportation, where there had been no failure of performance.

The whole transportation had been given to Giddings & Co. before Major Chapman's promise to the claimant, which both knew, and there is no evidence that they failed to perform their part. Any attempt to take from them a portion of what they were entitled to was a fraud upon them, which would vitiate any subsequent contract. The claimant's rights rest entirely upon this fraud. If, in the consummation of it, he made less than he expected, or actually lost, no judicial tribunal can afford him relief.

THIRD. What passed between Major Chapman and the claimant did not constitute a contract.

To constitute a contract each party must be bound to the performance of some obligation. In this case the claimant does not set up or prove that he obligated himself to perform any act. While he believed he could realize large profits by performance, he would, of course, transport the stores; but if events had so shaped themselves that a loss was certain to follow performance, the government had no hold upon him in case he refused. All that there is in this case is an assurance on one side, but none on the other forming a consideration to sustain such a promise. The whole thing was a nullity.

FOURTH. *The contract, if one was made, was conditional, and the contingencies upon which it rested did not occur between the claimant's return to Fort Clark and the receiving the stores.*

The contract, if there was one, was made when the claimant returned from San Antonio, as stated in Major Chapman's letter, (Record, p. 10,) which was to give him all the freight he could without interfering with the contract of Giddings & Co.

The facts clearly show—

1. That up to the 25th of November there was no freight at Fort Clark which he could give him.

When freight did arrive at Fort Clark so that it could be given to him, he was furnished with it, and consequently there was no violation of the contract. The claimant received the freight as soon as the contingency happened upon which his right depended.

2. They also show that no freight whatever could have been furnished the claimant without interfering with the contract of Giddings & Co.

This being so, he was not entitled to receive any freight at all at any time, and therefore has no claim for any losses he may have sustained.

If the occurrences at Corpus Christi, in which Major Chapman gave the assurance above referred to, did not constitute a contract, then none was made. The inquiry made by the claimant through Captain Bokkelen, and the answer returned by Major Chapman, do not constitute a contract. Nothing, then, occurred to bind either party.

The claimant did not bind himself to return to take a load, and nothing was said of the size of the train. Nothing was said in Captain Bokkelen's note concerning making a contract for transportation, nor in Major Chapman's. The latter expected there would be a load there for the claimant, but he did not contract that there should be such load; nor did he agree if he would come and had to wait for one he would pay him for waiting until he could get one.

FIFTH. *The claimant has not shown that Major Chapman had any authority to make such a contract as he alleges was made with him.*

The claimant proceeds upon the ground that Major Chapman was the agent of the government in making the contract in question. But he makes no proof of that fact. His official position authorized him to do certain things as official duty; but it is not shown that he was authorized either by law or by the direction of the head of his department to make such a contract. On the contrary, the Quartermaster General disavows the contract and denies his power to make it.

It rests with the claimant to show the authority, which cannot be assumed without proof. His not having done so, the inference is irresistible that he did not possess it. If there really was such a contract as the claimant assumes, and it was made without authority, then his remedy is not upon the government, but upon the person

who assumed and exercised authority which he did not possess. The government can only be liable when it conferred authority upon an agent to make a contract binding upon it. If Giddings & Co. had such a contract as is represented, they would have a far better claim for damages to the extent of the profits made on the freight given the claimant after the date of their contract, if they were on hand ready to perform, than the latter has for waiting at Fort Clark to deprive them of such profit. The claimant cannot rightfully complain, because he knew that he was depredating upon the rights of others in procuring the freight he obtained. But however all this may be, he cannot sustain a claim against the government without showing that Major Chapman had authority to make the contract set up, which he has wholly failed to do.

SIXTH. There is no proof that Major Chapman requested the claimant to remain at Fort Clark for freight, and therefore he has no just claim to compensation for waiting.

The claim as set up in the petition in this case is, that Major Chapman promised to give him a load of freight from Fort Clark to Fort Davis if he returned to the former place; and that when he returned there was no freight for him, and therefore he waited over three months for it. There is not a particle of proof that Major Chapman requested him to remain, either at the time he authorized Captain Bokkelen to inform him there would be freight for him, or after he returned to Fort Clark and found no freight there. There is no allegation of any such fact in the petition.

When he arrived at Fort Clark and found there was no freight for him, under the case as stated by himself, he was not authorized to remain there and wait until freight should be furnished. He should have left there to attend to his own business; and if he had a legal contract, he would have been entitled to demand the amount of profits he could have made under such contract. If he chose to remain, he did so upon his own responsibility. Unless his contract was for him to remain, he could not lawfully do so under it.

His witness, *Dagure*, (Record, p. 16,) testifies that a trip from Fort Clark to Fort Davis is usually made in eighteen days. It could probably return within thirteen, making in all a month. The claimant had taken two loads previously. For the first he received \$3,331 68, and for the second \$3,572 04, (Record, p. 18,) the average being \$3,451 86, which would be the average receipts for a month.

Three months at this rate would amount to.....\$10,355 58
He states his expenses for three months at, (Record, p. 14,) 8,051 14

Showing that his profits on three loads could only be..... 2,304 44

Or \$768 14 for one month, being all he could lawfully claim if he had had a valid contract, and he had met with no accidents.

Instead of leaving when he found there was no freight, and demanding the amount of profits he could have made on a load, he chose to

remain idle for three months, and now demands \$15,871 14. No known rule of law will sanction such a claim. He had the same right to remain there three years that he had to do so for three months, and charge at the same rate, if freight had not previously arrived for him. But there was neither a contract which authorized him to remain or to demand freight at all, unless it was there for him, and consequently no damages can be lawfully claimed.

R. H. GILLET, *Solicitor*.

AUGUST 31, 1858.

IN THE COURT OF CLAIMS.

MAY 30, 1859.

FERNANDO SAMANIEGO *vs.* THE UNITED STATES.

Judge BLACKFORD delivered the opinion of the court.

This is a claim founded on contract. Damages claimed, \$15,871 14. The contract is to be ascertained from the following correspondence:

“ASSISTANT QUARTERMASTER’S OFFICE,
“Fort Clark, Texas, June 24, 1855.

“MAJOR: F. Samaniego is here with his train, and will leave Fort Davis about the 10th of July, returning to this post 20th August. He wishes to know if a load will be here at that time for him; if not, he will not return.

“W. K. VAN BOKKELEN.
“Capt. A. Q. M.

“Major W. W. CHAPMAN,
Acting C. A. Q. M., *Corpus Christi*.”

“ASSISTANT QUARTERMASTER’S OFFICE,
Corpus Christi, Texas, July 10, 1855.

“CAPTAIN [Extract]: Your letter of June 24 was duly received. Please inform F. Samaniego that there will be a load for his train at Fort Clark by the 20th of August.

“W. W. CHAPMAN,
“Acting Chief A. Q. M., *Department of Texas.*
“Captain W. K. VAN BOKKELEN, A. Q. M.”

In accordance with the above letter of Major Chapman, Captain Bokkelen informed Mr. Samaniego that there would be a load for his train at Fort Clark by the 20th of August.

On the 22d or 23d of August, 1855, Mr. Samaniego arrived at Fort Clark and reported to Captain Bokkelen with a train of seventeen wagons; but the government had no loading then for the wagons, and Mr. Samaniego remained at Fort Clark with his teams and men until the 25th of November, 1855, waiting for loading. On that day

he received the stores which had just arrived at Fort Clark from Corpus Christi, and which were intended to be at Fort Clark on the 20th of August, but had been delayed by bad weather and roads.

The object of this suit is to recover damages for the delay from the 20th of August to the 25th of November, 1855, in the furnishing of said loading to the claimant.

One of the objections of the solicitor to this contract is, that there is no consideration for the promise of the quartermaster to furnish the loading. There is no doubt that, unless Samaniego promised to receive the loading at Fort Clark on the 20th of August, 1855, and transport it to the proper place, the quartermaster's promise to furnish him with the loading on that day was not binding for the want of consideration. But the solicitor has not satisfied us that Samaniego did not make such a promise. We need not, however, stop to examine that point, as there is another objection to the action which we consider to be fatal. That objection is, that Samaniego did not arrive at Fort Clark with his teams until after the 20th of August, 1855, and was not, of course, ready on that day to receive the loading. The furnishing of the loading by the quartermaster, and the receiving of it by Samaniego to be carried, on the 20th of August, were concurrent acts, and neither party could sue for a breach without showing a readiness to perform his part of the contract on the specified day.—(Chitty on Contracts, 638.)

Neither party being ready on the appointed day, the contract was, at law, *ipso facto* dissolved.—(Clarke vs. King, 1 R. and M., 394 S. C., 2 C. and P., 286.)

It may not be improper to notice that there is no reason to suppose that the quartermaster who was to furnish the loading in question was intentionally in default. The loading was to be brought from Corpus Christi to Fort Clark, and was intended to be at Fort Clark by the 20th of August aforesaid, but was delayed by the badness of the weather and roads.

The damages claimed in this suit are those which, it is alleged, the claimant sustained by waiting (at Fort Clark) for loading for his wagons from the 23d of August, 1855, to the day on which the stores, then just arrived at Fort Clark from Corpus Christi, were delivered to him, viz: the 25th of November, 1855. But it does not appear that his waiting for the loading was at the request of any agent of the government, but was, so far as we are informed, his own voluntary act for the furtherance of his own views, whatever they may have been. If the carrier in such case be ready on the day, the non-delivery of the loading to him is a cause of action, and the profits that would have been made by the trip is, ordinarily, the measure of damages.

The claimant in the present case, not having been ready on the specified day, has no right to recover.